

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action No.
10-CR-20165

vs.

HON. MARK A. GOLDSMITH

PAUL ALEXANDER CROSSLEY,

Defendant.

**ORDER GRANTING THE GOVERNMENT'S MOTION TO DISMISS
DEFENDANT'S MOTION TO VACATE SENTENCE AND DENYING
WITHOUT PREJUDICE DEFENDANT'S MOTION TO VACATE SENTENCE**

This matter is presently before the Court on the government's motion to dismiss Defendant's motion to vacate sentence. Defendant was sentenced by this Court on November 2, 2010, and final judgment was entered on November 10, 2010. Defendant filed a timely notice of appeal on November 15, 2010; thus, the matter is now before the United States Court of Appeals for the Sixth Circuit. Defendant filed a motion to vacate his sentence on the same day as he filed his notice of appeal. However, the motion is premature because, "in the absence of extraordinary circumstances, a district court is precluded from considering a § 2255 application for relief during the pendency of the applicant's direct appeal." *Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998). No extraordinary circumstances have been established here. Accordingly, the government's motion is granted; Defendant's motion to vacate sentence is denied without prejudice to Defendant's right to re-file the motion at an appropriate time.

SO ORDERED.

Dated: December 17, 2010

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 17, 2010.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager